

**MONTGOMERY COUNTY, STATE OF MARYLAND
COMMISSION ON COMMON OWNERSHIP COMMUNITIES**

Greencastle Lakes Community Association,
Complainant,

v.

Case No. 88-06
December 13, 2007

Christine Baker,
Respondent

DECISION AND ORDER

The above-captioned case came before a Hearing Panel of the Montgomery County Commission on Common Ownership Communities (the "Commission") for review and decision pursuant to Chapter 10B of the Montgomery County Code (2004, as amended). The Hearing Panel has considered the evidence of record and finds, determines and orders as follows.

Procedural Background

On December 26, 2006, the Greencastle Lakes Community Association ("Greencastle" or "the Complainant") filed a dispute with the Commission alleging that Christine Baker ("Baker" or "the Respondent") was in violation of the governing documents and architectural rules of the community by failing to repaint the wood trim on her town home, by storing debris—*i.e.*, broken bricks and broken window screens—in her yard, and by not stacking her firewood neatly. Greencastle requested that the Commission order Baker to repaint the trim, remove the debris, and stack the firewood properly. The complaint further alleged, and was supported by documentary evidence to the effect, that Greencastle had notified Baker of some or all of these violations more than two years earlier and that Baker had taken no action to comply.

The Commission's staff mailed this complaint to Baker on the same day it was received and instructed her to respond in writing within 30 days, pursuant to COMCOR Section 10B.06.01.03(b). Baker did not file any written response but did telephone the staff and promise to complete the repairs as soon as weather permitted. However, by March 20, 2007, Baker had not made the repairs and the staff referred the dispute to the Commission for further proceedings.

On May 2, 2007, the Commission voted to accept jurisdiction of the dispute, refer it to a Hearing Panel, and to schedule it for a public hearing. On May 3, 2007, the Commission sent both parties a "Summons, Statement of Charges and Notice of Hearing" by regular and by certified U.S. Mail. The Summons directed the parties to attend a hearing on June 20, 2007.

On May 15, 2007, Greencastle moved for a default judgment based on the fact that Baker had never filed an answer to the complaint. The Hearing Panel took the matter under advisement and shortly before the date of the hearing it informed Greencastle that it did not have to attend the June 20 hearing. On June 20, 2007, the Hearing Panel met as scheduled. Baker did not appear and the Hearing Panel unanimously determined to issue a default judgment.

Greencastle's motion for a default judgment included a request that the Hearing Panel award attorney's fees. The motion did not specify the legal basis for the request, nor did it state the amount of the requested fees. Greencastle did not serve a copy of the motion on Baker.

The Hearing Panel requested Greencastle to file a more detailed application for attorney's fees, and on August 21, 2007, Greencastle filed an Attorney's Fees Affidavit in which it stated that the hourly rate for the attorney was \$375, that the attorney spent 1.6 hours on the dispute, and that the total amount requested was \$600. Greencastle cited Section 10B-13(d) of the Montgomery County Code in support of its application. Greencastle did not send a copy of this Affidavit to Baker, and the Hearing Panel directed the staff to do so and to give Baker the opportunity to respond to the request for fees. The staff sent the request and affidavit to Baker on September 7, 2007. Baker made no reply to the request.

After reviewing the Affidavit, the Hearing Panel requested Greencastle to itemize the hours claimed. On October 17, 2007, Greencastle filed an Itemization of Attorney's Fees. As additional legal work had been rendered, this latter document requested a total of \$750 in fees for 2.0 hours of work at the rate of \$375 per hour.

Concerned about the differences between the Itemization and the Affidavit, and taking note of the fact that in another case filed by Greencastle and involving the same attorney Greencastle had stated the hourly charge for attorney's fees to be \$290, the Hearing Panel requested further clarification from Greencastle's counsel. In response, Greencastle filed a Revised Attorney's Fees Affidavit, claiming 2.0 hours of work at the rate of \$290, a total of \$580, and explaining that there had been an error in the billing rate.

While these matters were pending and shortly before the Hearing Panel was ready to issue a final written Decision, Greencastle notified the Hearing Panel that Baker had made the necessary repairs, but that it still maintained its petition for an award of attorney's fees.

Findings of Fact

1. The Greencastle Lakes Community Association is a common ownership community whose Declaration of Covenants, Bylaw, and Articles of Incorporation dated October 15, 1984 are filed in the land records of Montgomery County at Liber 2675, Folio 1737. Pursuant to those governing documents Greencastle has adopted

"Architectural Standards and Guidelines", the most recent version having been adopted in May, 2004.

2. Christine Baker is the owner of a town home located at 14212 Angelton Terrace, Burtonsville, Maryland, and this unit is part of the Greencastle Lakes Community Association and subject to its governing documents, rules and regulations.

3. As early as June 17, 2004, Greencastle notified Baker that she was in violation of the community's Declaration and architectural rules by allowing deteriorated paint on her unit; however, the homeowner took no action to remedy the violations... Greencastle sent additional notices in 2005 and 2006, in which it added additional complaints about the accumulation of debris in Baker's yard. Baker again failed to take any corrective action.

4. By failing to maintain the paint on her unit in good condition, by storing broken bricks and window screens on her property, and by failing to maintain her wood pile in good condition, Baker violated Article V, Section 1(h) of the Declaration and Section 130 of the Architectural Standards and Guidelines.

5. Greencastle filed this dispute with the Commission, the matter was set for a hearing on June 20, 2007, and Greencastle filed a request for attorney's fees. Although Baker failed to file any responsive pleadings, she did correct the violations in October or November, 2007.

6. Baker was duly notified of the Complaint, hearing, and request for attorney's fees.

7. Greencastle's attorney spent not less than 2 hours at the billing rate of \$290 per hour pursuing this case. Both the fee and the number of hours expended are reasonable under the circumstances of this case.

8. Section V.4 of Greencastle's Architectural Standards and Guidelines state that any costs incurred by Greencastle in a legal action to remove or correct an architectural violation shall be charged to the homeowner responsible for the violation.

Conclusions of Law

1. Baker violated the governing documents of her community by failing to maintain her property in good condition.

2. Although Baker has recently corrected the violations, an award of attorney's fees is reasonable and proper under the last paragraph of Section 10B-13(d) of the Montgomery County Code. That provision authorizes a hearing panel to award costs, including attorney's fees, if an association document so requires and the award is reasonable under the circumstances. Baker ignored repeated attempts by Greencastle for over 2 years to persuade her to correct the violations on her property, thereby compelling

Greencastle to take enforcement action against her. Baker presented no defense or mitigating circumstances for her persistent refusal to take corrective action. Even after Greencastle filed this action, Baker failed to take any corrective action until after the hearing and she learned that Greencastle was requesting an award of attorney's fee. Greencastle's rules require the homeowner to reimburse Greencastle for any legal fees it incurred in a legal action to enforce its architectural rules, and the Hearing Panel finds that Greencastle prevailed in this action even though Baker has finally corrected the violation. It is the Panel's considered determination that Baker would not have acted if Greencastle had not pursued this action at the Commission level. The two hours of time claimed to pursue Greencastle's claim are quite reasonable, as Greencastle could not be certain until shortly before the hearing that it would not need to attend. Therefore the Hearing Panel concludes that an award of attorney's fees is not only required by Greencastle's rules but is reasonable under all the circumstances of this dispute.

ORDER

The Hearing Panel therefore ORDERS:

1. That within 45 days after the date of this Order, the Respondent, Christine Baker, shall pay to Greencastle Lakes Community Association five hundred eighty dollars (\$580.00) as reimbursement for attorney's fees incurred in this matter and \$50.00 (fifty dollars) as reimbursement for its cost to file this complaint with the Commission, for a total of six hundred thirty dollars (\$630.00).

2. If Baker fails to pay this amount in full within such 45-day period and on time, Greencastle may add the amount of this award to the assessments due from Baker and may proceed to collect it in the same way as authorized by State law and its governing documents to collect any other unpaid assessment, including but not limited to the imposition of interest charges, liens, and an action at law to collect a debt or to initiate foreclosure.

Any party aggrieved by this Decision may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days after the date of this Decision pursuant to the Maryland Rules of Procedure governing administrative appeals.

Commissioners Farrar and Gelfound concur.

Greg Friedman, Panel Chair

Date